

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

3 ETHLOKIA PLUMBER . C.A. NO. H-20-672
4 ex rel. K.W. . HOUSTON, TEXAS
5 VS. .
6 HARRIS COUNTY DEPARTMENT OF . MARCH 12, 2021
7 EDUCATION . 2:06 P.M. to 2:28 P.M.

8 TRANSCRIPT of TELEPHONE CONFERENCE
9 BEFORE THE HONORABLE ANDREW S. HANEN
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES: (All participants appearing by phone)

12 FOR THE PLAINTIFFS: YVONNILDA GARZA MUNIZ
13 Law Office of Yvonnilda
14 Muniz PC
15 P.O. Box 92018
16 Austin, Texas 78709

17 BRANDON DUKE
18 RACHAEL THOMPSON
19 Winston Strawn LLP
20 800 Capitol St
21 Suite 2400
22 Houston, Texas 77002

23 KYM ROGERS
24 KATHRYN HOGAN
25 Disability Rights Texas
2222 W Braker Ln
Austin, Texas 78758

26 Proceedings recorded by mechanical stenography, transcript
27 produced by computer-aided transcription.

APPEARANCES CONTINUED

FOR THE DEFENDANT:

MELISSA GOINS
Karczewski Bradshaw Spalding
3700 Buffalo Speedway
Suite 560
Houston, Texas 77098

OFFICIAL COURT REPORTER:

KATHY L. METZGER
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002
713-250-5208

1 P R O C E E D I N G S

2 *THE COURT:* This is Judge Hanen, and we're on the
3 record in Plumber versus Harris County, 20-cv-672. Who do I
4 have on the line for the plaintiffs?

14:06:25 5 *MS. MUNIZ:* Yvonnilda Muniz.

6 *THE COURT:* All right. And who do I have on the line
7 for the defendant?

8 *MS. GOINS:* Melissa Goins, Your Honor.

9 *THE COURT:* All right. Ms. Muniz, you had asked for
10 kind of a status conference in connection with your proposed
11 motion to withdraw and substitute in new counsel. Do you want
12 to briefly describe it for the record?

13 *MS. MUNIZ:* Yes. On February 22nd I submitted a
14 motion to substitute counsel. I spoke with Ms. Goins actually
15 and she was not opposed to substitution of counsel, but she was
16 opposed to the motion for a new scheduling order.

17 I have been ill and continue to have problems and
18 just have not been able -- I have not been able to resolve my
19 health issues, to the point where I feel at this point that it
20 will hurt me representing my client and I did seek help and
21 Disability Rights. I've got Kym Rogers, Brandon Duke -- well,
22 Kym Rogers and Kathryn Hogan are from Disability Rights, and
23 then Brandon Duke and Rachael Thompson are from -- and I just
24 forgot the name of the law firm.

14:07:55 25 *MR. DUKE:* Winston and Strawn.

14:07:57 1 *MS. MUNIZ:* Winston, yes. I knew Winston. I just
2 didn't remember the rest. And they have agreed to step in, but
3 the only way they can do that is if there's an extension on the
4 scheduling order.

14:08:09 5 *THE COURT:* All right. Ms. Goins, do you want to
6 reply?

7 *MS. GOINS:* Yes, Your Honor. We, like Ms. Muniz said
8 earlier, we do not oppose substituting counsel if she feels
9 she's unable to continue to bring this lawsuit on behalf of her
14:08:27 10 client. However, we do very much oppose restarting this matter
11 on a different theory of litigation, which is what essentially
12 is being proposed in conjunction with the substitution of
13 counsel. If these agreed deadlines are all reset, it would be
14 extremely prejudicial to my client. It would essentially be
14:08:45 15 restarting the clock on this matter now more than a year after
16 filing, which not only results in a time delay but substantial
17 additional unnecessary litigation cost.

18 The potential impact on the judicial proceedings
19 is again more delay. The new proposed substituted counsel
14:09:04 20 seeks additional written discovery and at least five
21 depositions. It is important to note that Ms. Muniz during the
22 entirety of this litigation has not requested a single
23 deposition from HCDE. After the expert report deadline was
24 passed, our office did not receive any communication, written
14:09:23 25 or otherwise, from Ms. Muniz in November or December or January

14:09:28 1 regarding any issues obtaining additional discovery or
2 resetting any other deadlines in this case.

3 The first time we've heard of that was when just
4 prior to her filing her motion. And while we do understand
14:09:42 5 that she presumably has no control over her health issues, she
6 did have reasonable control over this docket and her case, if
7 she needed discovery, securing extensions and all the while did
8 not relay her current concerns until way after the discovery
9 deadlines had expired.

14:10:01 10 So, again, we ask this Court to keep the current
11 scheduling docket control order in place and that if counsel is
12 substituted, that they take this case as is and prepare for
13 trial based on the evidence that Ms. Muniz has gathered within
14 the agreed deadlines currently in place.

14:10:21 15 *THE COURT:* All right. Ms. Muniz, do you want to
16 reply to that?

17 *MS. MUNIZ:* Yes. And I will defer to Kym Rogers. But
18 they're only asking for a 30-day delay.

19 But, Ms. Rogers, do you want to speak to that?

14:10:34 20 *MS. ROGERS:* Yes. Rachael Thompson is actually going
21 to speak on behalf of us today.

22 *MS. THOMPSON:* Rachael Thompson. And, yes, we do
23 request a little bit of extra time to extend some of these
24 deadlines, but it's basically just to focus the issues and the
14:10:56 25 legal claims that are in the complaint to better represent the

14:11:01 1 client. In order for us to properly represent the client as we
2 come in at this point, we need a little more time, because we
3 feel it wouldn't be fair to the client otherwise, based on what
4 we have. And, yes, discovery has been done and we recognize
14:11:21 5 that, but there are still some things missing from it and --

6 *THE COURT:* What do you need to do?

7 *MS. THOMPSON:* Well, we need a few depositions. The
8 objections that were raised have not been discussed. And
9 there's a couple issues regarding written policies that we have
14:11:45 10 not seen that we would like to request, and just a few very,
11 very targeted issues. And we'll use the discovery that's been
12 done. There's just a few things that we need.

13 And we recognize that no depositions have been
14 taken, and that's one of the reasons that we feel we need to do
14:12:06 15 a few depositions as well in order to fully represent the
16 client at this point.

17 *MS. GOINS:* Your Honor, this is Ms. Goins, if I may
18 briefly respond to that.

19 *THE COURT:* Go ahead.

14:12:24 20 *MS. GOINS:* HCDE believes that, you know, it's not
21 just -- you know, counsel indicates, well, this is a short
22 extension of time. But if you look at the actual request,
23 they're asking to have all deadlines reset. And these include
24 deadlines that have well been passed. They have asked for a
14:12:44 25 deadline establishing the ability to amend the complaint, new

1 4 : 1 2 : 4 8 1 deadlines for expert reports and new discovery deadlines. The
2 discovery deadline in this case as currently stands expired on
3 January 19th. So this request came even a month after that
4 deadline expired. So while it's targeted as a short delay,
1 4 : 1 3 : 0 6 5 they're asking to go back and set and establish new deadlines
6 for things that have passed well into last year.

7 *THE COURT:* All right. Well, I'm not going to redo
8 the whole scheduling order. I am going to allow counsel, if
9 they wish, to come in and do some discovery, but we're not
1 4 : 1 3 : 3 5 10 resetting all these deadlines, especially the ones that we have
11 already gone by. And that's one of the reasons I wanted to go
12 ahead and have this hearing, because I wanted to hear what
13 needed to be done.

14 Ms. Thompson, what time frame do you think you
1 4 : 1 4 : 0 0 15 could get your discovery done in?

16 *MS. THOMPSON:* Well, we were planning -- we had said
17 that we could definitely meet this expert report deadline that
18 had been put out there on April 15 --

19 *THE COURT:* Well, I'm --

1 4 : 1 4 : 1 7 20 *MS. THOMPSON:* -- and, again, June 1st was the idea,
21 but I think we're amenable to discussing changing that.

22 Brandon, do you have --

23 *MR. DUKE:* Right. Your Honor, this is Brandon. If I
24 can just address that briefly.

1 4 : 1 4 : 3 8 25 *THE COURT:* Go ahead.

14:14:38 1 *MR. DUKE:* So, we proposed a schedule with some key
2 dates. And just to clarify, we asked for leave to amend the
3 complaint as opposed to you granting now the option to amend
4 the complaint. But we do think that some amendments are --
14:14:54 5 would be helpful for both parties going to streamline and focus
6 the case, in part potentially removing some claims and
7 refocusing some of the other ones so that they're more keyed on
8 what we think this case should be about. But, again, we need
9 to confer with our, I guess, putative client about that.

14:15:16 10 And then as far as discovery, the date that we
11 have proposed is June 1st, which I think is not a significant
12 delay in this case and having that set for a docket call in
13 October, which seems like a realistic timeline for trial as the
14 proceedings go, essentially in light of the fact that this case
14:15:39 15 was filed right before COVID and, you know, over the last year
16 I don't think much has actually been done in the case. And
17 from what I can hear from the other side, again, to somewhat
18 address your question, their position seems to be that they're
19 prejudiced by having to do some litigation in the case. I get
14:15:58 20 that deadlines are passed, but as far as a forward-looking
21 issue, I think that we can get discovery done in the next few
22 months so that the case can be better prepared for trial.

23 *THE COURT:* Tell me what the damages are in this case.
24 And, Ms. Muniz, you may be the person best, what the alleged
14:16:24 25 damages are, to talk to this.

14:16:28 1 *MS. MUNIZ:* You mean -- I'm not understanding.
2 Money-wise, monetary damages?

3 *THE COURT:* Well, what happened to the kid?

4 *MS. MUNIZ:* His collarbone was broken. He also --
14:16:41 5 when he was restrained, his collarbone was broken when he hit
6 the floor and he also hit his head on a table and he's had
7 seizures since then. He's also been suffering from migraines.

8 *THE COURT:* Okay. Well, Ms. Thompson or Mr. Duke,
9 tell me what you -- how you would try this case. I mean, I
14:17:12 10 entered an order in October saying that I wasn't going to allow
11 any further extension on either answering discovery or experts
12 because --

13 *MS. THOMPSON:* Yes, Your Honor.

14 *THE COURT:* -- we had extended this before and now
14:17:33 15 you're asking me to do it in the face of that order.

16 *MS. THOMPSON:* Yes, Your Honor. Ms. Thompson here.
17 Yes, we realize that this is a big ask and we are not here to
18 talk about the past. We recognize that Ms. Muniz has been ill
19 and the pandemic has made things a lot more difficult to
14:18:01 20 litigate these cases. But, you know, somebody should be able
21 to represent plaintiffs in this case and litigate it for them.

22 *THE COURT:* Well, I'm willing to let you represent
23 them, but what I have is like a conditional motion, you know.
24 I'm even considering allowing you to do some discovery, but I'm
14:18:30 25 not allow -- I'm not leaning toward allowing you to replot old

1 deadlines that the Court instituted twice.

2 *MS. GOINS:* Your Honor, this is Ms. Goins, if I may.
3 There has been discovery done and conducted on this case. So
4 much so that HCDE in compliance with the current deadlines has
5 briefed and filed an MSJ with the Court for review based on the
6 discovery that's been conducted within the agreed to and
7 current deadlines. So despite the fact that there is an
8 indication that there hasn't been a lot done, there has been
9 and it's supported and demonstrated in our motion.

10 *MR. DUKE:* Your Honor, this is Brandon Duke. If I
11 could --

12 *THE COURT:* Go ahead, Mr. Duke.

13 *MR. DUKE:* -- as to your original question, so as to
14 the conditional nature of the motion, the purpose of kind of
15 how it was set up is that originally when DRTX was made aware
16 of this case, they felt that plaintiffs' claim had merit, but
17 because of the current posture of the case and the limited
18 resources that DRTX has, it couldn't take on the case in the
19 current posture. And so that's why it asked for additional
20 time and then we, as pro bono counsel with them, had asked for
21 additional time.

22 And we recognize that you seem to be willing to
23 give some additional discovery, which we think would be helpful
24 in order to actually have a case to present at a trial, because
25 I think currently how it stands, we couldn't fully represent

1 our client properly without some additional discovery and the
2 ability to refine the case.

3 And as to the motion for summary judgment, I
4 think that raises some of the concern is that if we are
5 involved, we would get rid of some of the issues that are
6 raised in the summary judgment, which effectively moots a
7 decent amount of it. Obviously some things will still stand
8 and we can address those as far as timing, if it makes sense to
9 address those now versus shortly after, if we're allowed the
10 opportunity to amend, but I think those are things that we can
11 address later. I just think that that goes to the current
12 posture of the case, not being in the right spot and just
13 having a little bit of additional time in discovery in order to
14 best prepare the case for trial on behalf of -- you know, to
15 protect the plaintiffs' interests in this case.

16 *THE COURT:* All right. I guess what I would -- here's
17 what the Court's willing to do, and I guess this is the order
18 or the -- what I would order orally to do, is I would let you
19 substitute in and let you do a minimal amount of discovery
20 between now and June 30th and then I would allow Ms. Goins till
21 July 1st to do any additional discovery that she wanted to do.
22 I would bump the trial, you know, a month or two to accommodate
23 that.

24 What I'm not willing to do is to revisit expert
25 deadlines, because I've given the plaintiffs multiple chances

14:22:09 1 to comply with that.

2 *MR. DUKE:* Judge, this is Brandon Duke again.

3 Obviously if that's what we can get, that's what we'll take,
4 and I can confer with our group to make sure that that's fine.

14:22:34 5 I'm not exactly sure what the status of the expert discovery
6 was. I do know that we had requested the opportunity to at
7 least designate one or two; but if we have to stand with what's
8 there, that's what we have to do.

9 *THE COURT:* All right. Well, that's what I would like
14:22:50 10 y'all to do. With that understanding, Ms. Goins, I know
11 you're -- to the extent you're objecting to that, I'll note it
12 and overrule it.

13 *MS. GOINS:* Thank you, Your Honor.

14 *THE COURT:* I will allow the motion to substitute. I
14:23:04 15 think -- and I don't know whether it would be Ms. Thompson or
16 Mr. Duke or whoever is going to take the lead from your
17 standpoint, need to get with Ms. Goins. Pick a trial date.
18 October would be fine. November would be fine. I mean, you
19 know, make it easy on yourself, that y'all agree on. Give
14:23:31 20 yourself -- give the plaintiffs, as I said, till June 1st, I
21 think that's what you were asking for, to do any additional
22 discovery you think you need to do. Then, Ms. Goins, if you
23 need to do any additional discovery, I'll give you till -- the
24 month of July to do that.

14:23:48 25 *MS. GOINS:* Yes, sir.

1 *THE COURT:* So propose an order to me with those
2 parameters. There is a pending motion for summary judgment. I
3 will put off consideration of that till April 30th. So that
4 gives y'all about 45 days to file a response -- for the
5 plaintiffs to file a response to that. And with that, who is
6 going to take -- who's going to be the lead counsel? Because
7 that's what I need to know. Who's the attorney in charge for
8 the plaintiffs?

9 *MR. DUKE:* This is Brandon Duke. I'll take that
10 title.

11 *THE COURT:* Okay.

12 *MR. DUKE:* And one thing just for clarification.
13 Obviously we can have a pre-hearing motion on that -- or a
14 pre-motion conference on that. But would you be amenable to a
15 motion for leave to file an amended complaint or is that off
16 the table?

17 *THE COURT:* You can file an amended complaint, because
18 I think, quite frankly, some of the -- I've looked at the
19 complaint that's on file now and it definitely needs
20 refining --

21 *MR. DUKE:* Okay.

22 *THE COURT:* -- and narrowing. So I will allow you to
23 do -- let's -- let me think about this. You can file an
24 amended complaint if you do it by the end of this month. And
25 then, Ms. Goins, you can respond to that by April 15th.

1 4 : 2 5 : 3 7 1 *MS. GOINS:* Okay.

2 *THE COURT:* And if you're satisfied with your current
3 what's on file motion for summary judgment, Ms. Goins, you can
4 leave it and the plaintiffs will respond to it by April 30th.
1 4 : 2 6 : 0 3 5 If you're not satisfied with it given the amended complaint,
6 you can file a new motion for summary judgment if you do so by
7 May 15th and then we'll -- the plaintiffs can just respond
8 according to the rules at that point.

9 *MS. GOINS:* Understood, Your Honor.

1 4 : 2 6 : 3 4 10 *THE COURT:* Okay. If you -- with those different
11 parameters, if you guys would agree on an order and send it to
12 me, I'll sign it and enter it.

13 *MR. DUKE:* We can do that, Your Honor.

14 *THE COURT:* All right. And just so you know, when we
1 4 : 2 6 : 5 5 15 get to the final pretrial date, I'll add it to your order. But
16 you guys pick a week that you think works good for both sides
17 and I'll just kind of add the final pretrial order date and the
18 final pretrial date once I see your -- what date you've chosen
19 for trial.

1 4 : 2 7 : 1 4 20 And what I do for -- in the final pretrial
21 conference is I admit all the exhibits. I get everything done,
22 so when the jury comes in, we don't waste any time. We go
23 right to voir dire. So that's just a heads-up. All of that is
24 in my local rules, but we'll get everything hopefully off the
1 4 : 2 7 : 4 3 25 table in the final pretrial conference so whatever date y'all

1 pick, we actually just start with voir dire.

2 Okay. Anything else we can resolve today?

3 MR. DUKE: Nothing from plaintiffs.

4 MS. GOINS: Nothing from defendant.

5 THE COURT: All right. Thank y'all.

6 MR. DUKE: Thank you.

7 MS. GOINS: Thank you.

8 (Concluded at 2:28 p.m.)

9 * * *

10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled cause, to the best
12 of my ability.

13

14 /s/ Kathy L. Metzger
Kathy L. Metzger
15 Official Court Reporter

3-16-2021
Date

16

17

18

19

20

21

22

23

24

25